

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
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P.O. Box 45029
Newark, New Jersey 07101

CERTIFIED TRUE COPY

FILED

JAN 31 2000

By: Marianne W. Greenwald
Deputy Attorney General
Tel. No. 973-648-4738

BOARD OF PHARMACY

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION	:	Administrative Action
OR REVOCATION OF THE LICENSE OF:	:	
	:	
DAVID SAMUELS, R.P.	:	FINAL ORDER OF
LICENSE NO.	:	DISCIPLINE
	:	
TO PRACTICE PHARMACY IN THE	:	
STATE OF NEW JERSEY	:	
<i>RI 18090</i>	:	

This matter was opened to the New Jersey State Board of Pharmacy upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Respondent is a pharmacist in the State of New Jersey and has been a licensee at all times relevant hereto.

2. On September 27, 1999 respondent was convicted of the crime of conspiracy to defraud the United States in Federal District Court in New Jersey. Specifically, respondent purchased diverted drug samples from a pharmaceutical sales representative for a discounted price and thereafter, sold the samples to the

public as prescription drugs. (Copy of Judgment of Conviction and attachments annexed hereto and made a part hereof).

3. The following sentence was ordered, 4 years probation, 6 months confinement to his home, a \$10,000 fine, 300 hours community service, and prohibited to be employed as a pharmacist or by a pharmaceutical company for the term of probation.

4. A Provisional Order of Discipline was entered by this Board on November 15, 1999 and served upon respondent on November 19, 1999.

5. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

6. Respondent submitted the following response: He regretted his poor judgment and hoped someday to be permitted to practice pharmacy.

7. Respondent's submissions were received by the Board and the Board determined that further proceedings were not necessary and that no material discrepancies had been raised. The Board was not persuaded that the submitted materials merited further consideration as respondent did not dispute the Findings of Fact or Conclusions of Law set forth in the Provisional Order.

CONCLUSIONS OF LAW

The above conviction provides grounds for the suspension of his license to practice pharmacy in New Jersey pursuant to N.J.S.A. 45:1-21(f) in that the crime of which respondent was convicted is one of moral turpitude and/or relates adversely to the practice of pharmacy.

IT IS THEREFORE ON THIS 15th DAY OF JAN, 2000,

ORDERED AND AGREED:

The license of respondent David Samuels to practice pharmacy is hereby revoked with no right to apply for reinstatement prior to his completion of the criminal term of probation.

STATE BOARD OF PHARMACY

By:

Richard A. Palombo R.P.
Richard A. Palombo, R.P., President

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA
VS.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

DAVID SAMUELS

Case Number: CR. 99-79-01

(Defendant's Name)

Donald M. LoMurro, Esq.
Attorney's Name

THE DEFENDANT:

X plead guilty to count(s) 1 of the Information. (Date of Conviction 2-22-99)
_____ was found guilty on count(s) _____ after a
plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s) which involve the following offenses:

TITLE SECTION	NATURE OF OFFENSE	DATE OF OFFENSE	COUNTS
18:371	Conspiracy to defraud The United States.	9-19-97	1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.,

_____ The defendant has been found not guilty on counts _____ and is discharged as to such count(s).

_____ Count(s) _____ (are) dismissed on the motion of the United States.

X The defendant shall pay a special assessment of \$ 100.00, for counts
1, which shall be due X immediately _____ as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 126-46-3098
Defendant's Date of Birth: 7-12-62

Defendant's Address:
7 Stearns Road
East Brunswick, N.J. 08816

FILED

SEP 29 1999

SEPTEMBER 27, 1999
Date of Imposition of Sentence

Signature of Judicial Officer

JOSEPH A. GREENAWAY, JR., U.S.D.J.
Name & Title of Judicial Officer

DATE: 9/29/99

AT 5:00 M
WILLIAM T. WALSH
CLERK

DEFENDANT: Samuels, David
CASE NUMBER: CR. 99-79 -01

Judgment - Page 2 of 4

PROBATION

The defendant is hereby placed on probation for a term of 4 years.

While on probation, the defendant shall not commit another federal, state, or local crime, shall be prohibited from possessing a firearm or other dangerous device, shall not possess an illegal controlled substance and shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay such fine or restitution.

The defendant shall comply with the following additional conditions:

X The defendant is to be confined to his residence for a period of 6 months commencing at the direction of the U.S. Probation Office. The defendant shall be required to be at his residence at all times except for approved absences for gainful employment, community service, religious services, medical care, educational or training programs and at other such times as may be specifically authorized by the U.S. Probation Office. The defendant shall wear an electronic monitoring device and follow electronic monitoring procedures. The defendant shall permit the probation officer access to the residence at all times and maintain a telephone at the residence without any custom services or portable, cordless equipment. The defendant shall comply with any other specific conditions of home confinement as the probation officer requires. The defendant shall pay the costs of electronic monitoring, specifically \$4.55 per day.

X The defendant shall provide the U.S. Probation Office with full disclosure his financial records to include yearly income tax returns upon the request the U.S. Probation Office. The defendant shall cooperate with the probation officer in the investigation of his financial dealing and shall provide truthful monthly statements of his income.

X The defendant is to refrain from employment in the pharmaceutical industry or as a pharmacist during the term of probation.

X The defendant shall perform 100 hours of community service for each of the three years of probation, for a total of 300 hours. Such community service shall be with an appropriate youth program.

SEE ATTACHMENT

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer with 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 9) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 10) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 11) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 12) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record of personal history of characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Samuels, David
CASE NUMBER: CR. 99-79-01

Judgment - Page 2A of 4

X The defendant is prohibited from incurring any new credit charges or opening additional lines or credit without the approval of the probation office, unless the defendant is in compliance with a payment schedule for any fine or restitution obligation. The defendant shall not encumber or liquidate interest in any assets unless it is in direct service of the fine or restitution obligation or otherwise has the express approval of the Court.

X The defendant shall pay a fine of \$10,000.00.

DEFENDANT: Samuels, David
CASE NUMBER: CR. 99-79-01

Judgment-page 3 of 4**FINE**

The defendant shall pay a fine of \$ 10,000.00 . The fine includes any costs of incarceration and/or supervision.

 This amount is the total of the fines imposed on individual counts, as follows:

 The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

 The interest requirement is Waived.

 The interest requirement is modified as follows:

This fine plus any interest required shall be paid:

 in full immediately.

 in full not later than _____.

 in equal monthly installments over a period of _____ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.

 X in installments according to the following schedule of payments: The fine shall be paid in equal monthly installments until the full amount has been paid. The defendant shall notify the United States Attorney for this district within 30 days of any change of mailing or residence address that occurs while any portion of the fine remains unpaid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.A. § 3614.

STATEMENT OF REASONS

☐ The court adopts the factual findings and guideline application in the presentence report.

OR

☒ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary): Pursuant to 3B1.2(b), two level adjustment applied to defendant and loss determined to be more than \$5,000.00 but less than \$10,000.00, which has a two level enhancement.

Guideline Range Determined by the Court:

Total Offense Level: 8Criminal History Category: IImprisonment Range: 0 to 6 monthsSupervised Release Range: 2 to 3 yearsFine Range: \$ 1,000.00 to \$ 10,000.00

☐ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: \$

☐ Full restitution is not ordered for the following reason(s):

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reasons(s):

OR

The sentence departs from the guideline range

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following reasons(s):

Certified for a true copy on
This Date: 10/23/99
By: Eric W. Vorhies
X

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK

FILED

SEP 27 1999

Minutes of Proceedings

AT 8:30 M
WILLIAM T. WALSH
CLERK

Judge Joseph A. Greenaway, Jr.

SEPTEMBER 27, 1999

Date of Proceedings

Court Reporter Tom Brazaitis

Deputy Clerk Philip J. Selecky

Title of Case:

Docket # CR. 99-79-01

U.S.A. v. David Samuels

Appearances:

Richard Schechter, AUSA., for the govt.

Donald LoMurro, Esq., for the deft.

Nature of Proceeding: SENTENCING

Hrg., on the defts., motions for a downward departure for the defts., minor role, no abuse of trust & amount of loss.

ORDERED motions granted.

Sentence on Count 1 of the Information: 4 Years Probation.

Additional conditions of Probation.

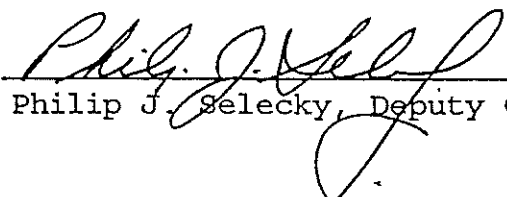
- 1) Home confinement for 6 months.
- 2) Financial disclosure.
- 3) Refrain from employment in the pharmaceutical industry.
- 4) 300 hours community service.
- 5) Prohibited from incurring any new credit.

Fine of \$10,000.00.

Special assessment of \$100.00, payable immediately.

Time Commenced: 10:00 a.m.

Time Adjourned: 1:00 p.m.


Philip J. Selecky, Deputy Clerk

Certified as a true copy on
This Date: 10/13/99
By: Eric W. Verhey
() Clerk
(X) Deputy

FILED

①

1998R01148/RJS

FEB 22 1999

AT 8:30 M
WILLIAM T. WALSH
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

:

HON.

Joseph A. Sheenway, Jr.

v.

:

CRIM. NO. 99-79-01

DAVID SAMUELS

:

18 U.S.C. § 371

INFORMATION

The defendant having waived in open court prosecution by Indictment, the Acting United States Attorney for the District of New Jersey charges:

COUNT ONE

(Conspiracy to Defraud the United States and
to Purchase Drug Samples In Violation of Law)

The Defendant

1. At all times relevant to this Information, defendant DAVID SAMUELS was a resident of East Brunswick, New Jersey, was a licensed pharmacist and owned and operated Pointe O' Woods Pharmacy in Howell, New Jersey, a pharmacy licensed by the State of New Jersey to sell prescription drugs to the public.

The FDA's Function

2. At all times relevant to this Information, the United States Food and Drug Administration ("FDA") was the federal agency responsible for protecting the health and safety of the American public by ensuring, among other things, that American consumers could purchase prescription drugs with the certainty that the products were safe and effective, that the packaging for such drugs bore adequate labeling to identify the name of the drug and to provide a control

number so that drugs could be recalled if necessary, and that drugs were not used after the expiration date for such drugs had elapsed.

3. To support the function of the FDA, Congress enacted the "Prescription Drug Marketing Act of 1987" which legislation prohibited certain drug distribution practices such as the sale of "drug samples." The legislation was designed to eliminate the risk to American consumers that the prescription drugs purchased from pharmacies were adulterated, misbranded, subpotent, or expired.

Drug Samples

4. At all times relevant to this Information:

(a) The term "drug samples" (or "physician samples") means a unit of a drug which was not intended to be sold and was intended to promote the sale of a drug;

(b) Manufacturers of drugs were authorized by federal law (21 U.S.C. § 353(d)(2)(A)) to distribute drug samples to physicians licensed to prescribe such drugs;

(c) Drug samples were provided to physicians free of charge to encourage physicians to prescribe such drugs to their patients;

(d) Pharmaceutical sales representatives visited physicians' offices to provide physicians with drug samples and were routinely given access to cabinets and storage lockers where drug samples were maintained;

(e) Federal law (21 U.S.C. §§ 331(t), 353(c)(1), 353(d)(1) and 353(d)(2)(A)) prohibited the sale, purchase or trading of a drug sample (referred to as "diverted" drug) and prohibited the distribution of such samples by anyone other than the manufacturer, a physician, or at the direction of a physician;

(f) Drug samples were routinely packaged in containers that indicated on the packaging that federal law prohibited the sale of such product; and

(g) Drug sample packaging indicated the control number and expiration date concerning the drug sample. The control number ensured that the drug could be precisely identified in the event of a drug recall. The expiration date ensured that a drug would not be distributed to the public after the drug had lost its effectiveness.

Pharmacies

5. At all times relevant to this Information:

(a) Pharmacies were prohibited from purchasing drug samples;

(b) Pharmacies were prohibited from purchasing misbranded drugs, such as drugs that failed to indicate a control number or an expiration date;

(c) Pharmacies were prohibited from dispensing drug samples or misbranded drugs to the public as prescription drugs; and

(d) Certain pharmacies, like Pointe O' Woods Pharmacy, sometimes purchased, at a discount, "diverted" drug samples or misbranded drugs which had been removed from their packaging through a wholesale submarket, commonly known as the "diversion market" which "prevented effective control over, and knowledge of, the true source of the prescription drug."

The Prescription Drug Marketing Act of 1987, Congressional Statement of Findings, Public Law 100-293 (1988).

**The Conspiracy to Defraud the United States
and to Purchase Drug Samples in Violation of Law**

6. Beginning in or about 1994 and continuing through in or about September 1997, in the District of New Jersey and elsewhere, the defendant,

DAVID SAMUELS

did knowingly and willfully combine, conspire, confederate, and agree with others to defraud an agency of the United States and to commit an offense against the United States, more particularly:

(a) to defraud the FDA, an agency of the United States, in violation of Title 18, United States Code, Section 371, by obstructing, hampering, hindering, frustrating, defeating, impairing, and impeding by craft, trickery, deceit, and dishonest means its lawful and proper government functions of ensuring that drugs were safe and effective for their intended uses, that such drugs were distributed with adequate labeling and that drugs were dispensed to the public to ensure effective control over, and knowledge of, the true source of the prescription drug; and

(b) to violate Title 21, United States Code, Section 353(c)(1), by knowingly and wilfully purchasing a drug sample.

The Principal Object of the Conspiracy

7. The principal object of the conspiracy was for **DAVID SAMUELS** and Pointe O' Woods Pharmacy to purchase diverted drug samples from a pharmaceutical sales representative for a discounted price and thereafter, to sell the samples to the public as prescription drugs.

Means and Methods of the Conspiracy

8. It was a part of the conspiracy that defendant **SAMUELS** and a coconspirator paid cash to a pharmaceutical salesman who delivered drug samples in unmarked plastic baggies and

sample containers to Pointe O' Woods Pharmacy.

9. It was a further part of the conspiracy that the drug samples sold to Pointe O' Woods Pharmacy did not in most cases contain the control number, expiration date and adequate labeling for such drugs.

10. It was a further part of the conspiracy that defendant **DAVID SAMUELS** and a coconspirator sold the drug samples they obtained from the pharmaceutical salesman to the public as prescription drugs. Thus, the purchasing consumer was unable to determine the true source of the prescription drug or whether the drug was outdated.

11. It was a further part of the conspiracy that from 1994 through September 1997, defendant **DAVID SAMUELS** and a coconspirator paid the pharmaceutical salesman more than \$40,000 in cash to obtain diverted drug samples.

OVERT ACTS

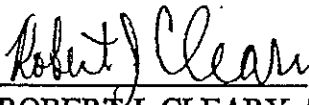
12A-C. In furtherance of the conspiracy and to effect the objects thereof, defendant **SAMUELS** and his coconspirators committed, and caused to be committed, the following overt acts in the District of New Jersey and elsewhere:

12A. On or about August 29, 1997, defendant **SAMUELS** and a coconspirator paid \$2,000 in cash to a pharmaceutical salesman for the delivery of diverted drug samples to Pointe O' Woods Pharmacy.

12B. On or about September 19, 1997, a coconspirator accepted a delivery of prescription drugs, including drug samples without adequate labeling, in plastic baggies at Pointe O' Woods.

12C. On or about September 19, 1997, a coconspirator paid \$2,000 in cash to a pharmaceutical salesman for the delivery of diverted drug samples to Pointe O' Woods Pharmacy.

All in violation of Title 18, United States Code, Section 371.


ROBERT J. CLEARY
Acting United States Attorney

Certified as a true copy on
This Date: 10/28/99
By Eric W. VanHusen
() Clerk
(X) Deputy